

REMARKS

The above amendments and these remarks are responsive to the final Office action dated December 1, 2005. Claims 1, 2, 4-6, 10-16, 18, 20, 21, and 23-26 are pending in the application. Claims 1, 2, 4-6, 10-16, 18, 20, 21, and 23-26 are rejected. By way of the present amendment, claims 1, 10, 13, 16, 18, and 23-26 are amended. Applicants have submitted a Request for Continued Examination under 37 C.F.R. § 1.114, and respectfully request that the above amendments be entered in conjunction with the Request for Continued Examination. In view of the amendments above, and the remarks below, Applicants respectfully request reconsideration of the pending claims.

Rejections under 35 USC § 102

Claims 1, 2, 10, 11, 13, 16, 18, 23, and 25-26 are rejected under 35 U.S.C. § 102(b), as being anticipated by Sabatura (U.S. Patent no. 4,876,106). Without acknowledging the propriety of the rejections, and in the interest of furthering the prosecution of the application, the Applicants have amended the claims to more particularly recite their invention.

In particular, Applicants have amended claim 1 to refer to specific compositions for the recited food formulations. Support for the amendment to claim 1 may be found at paragraphs 42-45, paragraphs 52-55, paragraphs 60-62, and paragraphs 68-70. Additionally, claims 18 and 26 have been amended to depend from amended claim 1. Dependent claims 10, 13, 16, and 23-25 have been amended to recite more particular compositions for the recited food formulations.

The recited food formulations incorporate components such as food starch, gums, sodium alginate, and other ingredients in appropriate proportions such that the food formulations may be used to create a target food item that is a milkshake, smoothie beverage, fondue, or sorbet, through the addition of water, and such that the resulting edible foodstuff has a texture and a flavor appropriate for the target food item.

Sabatura discloses a variety of compositions prepared from a nutritional base mix. The base mix of Sabatura contains 26.0 grams RT-34 (whey protein concentrate), 3.3 grams Alanate 230 (calcium sodium caseinate), 3.3 grams TMP 1220 (calcium sodium total milk proteinate), and 0.0165 grams Lecithin M-C-Thin Asol 436 (lecithin) (see col. 2, lines 1-24).

Although Sabatura discloses the addition of various flavoring agents to the base mix, each of the food compositions of Sabatura must include the base mix as set out above. Furthermore, none of the compositions of Sabatura includes the food formulations recited in amended claim 1.

In order to anticipate a claim, the cited reference must disclose each and every element of the rejected claim, as it is set out in that claim. Applicants suggest that Sabatura fails to anticipate the subject matter of claim 1, as amended, and therefore fails to anticipate the subject matter of claims 2, 10, 11, 13, 16, 18, 23, and 25-26, which depend from claim 1.

In view of the above amendments and remarks, Applicants respectfully request that the rejection of claims 1, 2, 10, 11, 13, 16, 18, 23, and 25-26 under 35 U.S.C. § 102 be withdrawn.

Rejections under 35 USC § 103

Claims 4-6, 12, 14-15, 20-21, and 24 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sabatura (U.S. Patent no. 4,876,106). In view of the amendments and remarks above, Applicants respectfully disagree, and suggest the Sabatura reference fails to establish the *prima facie* obviousness of claims 4-6, 12, 14-15, 20-21, and 24.

As discussed above, the Sabatura reference fails to disclose each and every element of the rejected claims, in that Sabatura fails to disclose the food formulations recited in claim 1, as amended.

Additionally, as the Sabatura requires that every disclosed food product incorporate the 'base mix' and flavoring, Sabatura cannot suggest the preparation of food formulations that fail to include the components of the 'base mix'. Applicants suggest that Sabatura fails to disclose food formulations matching the compositions recited in claim 1.

Sabatura additionally fails to provide any motivation to modify the teachings of the reference in order to arrive at the recited compositions. Sabatura fails to describe the addition of other texture-modifying components to arrive at a target texture or appearance. Instead Sabatura relies upon the use of the base mix in combination with a second flavoring component, to prepare "desserts, drinks, soup, vegetable and salad dressing" (col. 1, lines 17-21). Applicants suggest that the Sabatura reference fails to provide any motivation to modify the compositions of the reference so as to arrive at the recited food formulations.

Since Sabatura fails to disclose or suggest the recited food formulations, Sabature

additionally fails to disclose or suggest the food formulations in combination with materials for dipping, toppings, or add-in ingredients.

In view of the above amendments and remarks, Applicants respectfully request the withdrawal of the rejection of claims 4-6, 12, 14-15, 20-21, and 24 under 35 U.S.C. § 103.

It is now believed that the subject patent application has been placed in condition for allowance, and such action is respectfully requested. If the Examiner has any questions or concerns, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned agent of record.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 11-1540.

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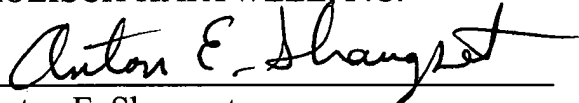
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on March 1, 2006.



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